

Review of Referee's Recommended Findings & Conclusions

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14.1 Hearings a Referee May Conduct

The court may assign a referee to conduct a preliminary inquiry or a preliminary hearing. MCR 5.913(A)(1). If a party does not demand that a judge preside, the court may assign a referee to conduct plea proceedings, nonjury trials, disposition hearings, progress reviews, dispositional review hearings, permanency planning hearings, and hearings on petitions to terminate parental rights. MCR 5.913(A)(1) and (B).

The referee must be licensed to practice law in Michigan to conduct plea proceedings, nonjury trials, disposition hearings, dispositional review hearings, permanency planning hearings, and hearings on petitions to terminate parental rights. MCR 5.913(A)(3).

14.2 Required Findings by Referees

MCL 712A.10(1)(c); MSA 27.3178(598.10)(1)(c), MCR 5.913(A)(1) provide that if a child protection case requires a hearing and the taking of testimony, the referee shall make a written signed report to the judge containing a summary of the testimony taken and a recommendation for the court's findings and disposition.* Referees do not have the authority to enter orders.

*See Forms
JC 09a and
JC 09b
(preliminary
hearings) and
JC 13 (trial).

14.3 Advice of Right to Seek Review Following Dispositional Hearing*

MCR 5.913(C) states that at the conclusion of the dispositional hearing, the referee must inform the minor, the parent, and the respondent of the right to file a request for review of the referee's recommended findings and conclusions as provided in MCR 5.991(B).

*See Form
JC 42.

14.4 Required Review

*See Chapter 8 (pretrial placement) and Chapter 13 (dispositions).

A judge of the court shall review the referee's recommended findings and conclusions when requested:

- (1) by a party in a case on the formal calendar heard by a referee;
- (3) by a party from the determination as to placement;* or
- (4) to avoid manifest injustice in any case.

MCR 5.991(A)(1), (3), and (4). "Formal calendar" means all stages of a child protective proceeding other than a preliminary inquiry or preliminary hearing. MCR 5.903(A)(6). See also MCR 5.903(A)(13)(b) (petitioner, child, respondent-parent, or other parent or guardian are "parties" in child protective proceedings).

The judge need not schedule a hearing to rule on a request for a review of a referee's recommendations. MCR 5.991(C).

14.5 Form and Time Requirements for Requests for Review

The request for review of either a referee recommendation or an order based on a referee recommendation must:

- (1) be in writing;
- (2) state the grounds for review; and
- (3) be filed within seven days after the conclusion of the hearing or disposition forming the basis for review.

MCR 5.991(B)(1)–(3).

14.6 Time Requirement for Filing a Response to a Request for Review

A party may file a written response within seven days after the filing of the request for review. MCR 5.991(B)(3).

14.7 Time Requirement for Judge's Decision

Absent good cause for delay, the judge shall consider the request within 21 days after it is filed if the child is in placement. MCR 5.991(C).

14.8 Form of Relief

MCR 5.991(E) states that the judge may affirm, modify, or deny the recommendation of the referee in whole or in part, on the basis of the record and the memoranda prepared, or may conduct a hearing, whichever the court in its discretion finds appropriate for the case.

14.9 Standard of Review

The judge shall deny the request for review unless:

- (1) the judge would have reached a different result had she or he heard the case, or
- (2) the referee committed a clear error of law which likely would have affected the outcome, or cannot otherwise be considered harmless.

MCR 5.991(D)(1)–(2).

14.10 Stay of Proceedings

MCR 5.991(F) states that the court may stay an order pending its decision on review of the referee's recommendation.

